IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8255 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DEEPA B. MOTIYANI

Versus

ASSISTANT COMMISSIONER OF LABOUR

Appearance:

1. Special Civil Application No. 8255 of 2004

MR YATIN SONI for Petitioner No. 1

MR NIRAJ J SHAH for Petitioner No. 1

MRS FALGUNI PATEL, AGP, for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 03/09/2004

ORAL JUDGEMENT

Rule. Learned AGP Mrs.Falguni Patel waives service of notice of rule on behalf of the respondents.

At the joint request of the learned advocates appearing for the parties, the matter is taken up for final disposal today.

2. In the present petition, the petitioner has challenged the action of the respondents in seeking to recover an amount of Rs.60,000/= from the petitioner on the allegation that the petitioner had engaged and employed child labour in contravention of the provisions of the Factories Act, Child Labour (Prohibition and Regulation) Act and other statutory provisions prohibiting employment of child labour. The petitioner has pointed out that on 11.5.97 some officers of the respondents appeared to have visited the factory of the petitioner and on the allegation that the petitioner has employed three workers who are under-aged, the petitioner was directed to pay an amount of Rs.20,000/- each labourer totalling to Rs.60,000/-. The petitioner has stated that the said order was passed without giving any opportunity of being heard. It is further stated that after passing the said order, the petitioner had made a representation dated 21.6.97 providing the proof of date of birth of the workers who were alleged to be under-aged. The petitioner has stated that none of the workers were under the age of 14, as alleged. It is further the case of the petitioner that after the said communication and the petitioner's reply to the same, for a long time there was no further communication from the respondents and suddenly on 30th April 2004, a recovery notice has been issued calling upon the petitioner to pay an amount of Rs.60,000/-.

3. In response to the notice issued by this Court, learned AGP Mrs.Falguni Patel has appeared for the respondents. On the basis of the instructions received by her, she admits the position that no show cause notice was issued to the petitioner before issuing the recovery notice dated 30th April 2004 to arrive at the conclusion that the petitioner was guilty of engaging under-aged child labour.

4. In view of this admitted position, the action of the respondent cannot be sustained. The respondents may have powers to take suitable action under the provisions of the Child Labour (Prohibition & Regulation) Act for employment of labourers who are under-aged, but at the same time, no penal action or other actions which would result into civil consequences can be taken without giving minimum of opportunity to the petitioner to represent its case. In the present case, additionally I find that the petitioner has already produced material in

support of its contention that all the three labourers were older than 14 years of age and that therefore he has not breached any statutory provisions. This aspect has also not been taken into consideration and the competent authority has not yet taken any decision whether the defence of the petitioner is valid or not. In absence of any such conclusion, it is not possible for the respondents to proceed further with the recovery of the penalty.

5. In conclusion, the petition is required to be allowed and the action of the respondent in seeking recovery of the penalty is required to be quashed and aside.

6. In the result, the petition succeeds and the impugned notice of recovery dated 30th April 2004 is quashed and set aside. This however is without prejudice to the rights of the respondents to proceed further after giving reasonable opportunity to the petitioner of being heard heard with respect to the allegations that the petitioner had breached the provisions of law by engaging child labour. Rule is made absolute accordingly with no order as to costs.

Direct service.

(Akil Kureshi, J.)

(vjn)